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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-927

GROS VENTRE TRIBE OF THE FORT BELKNAP INDIAN RESERVATION, MONTANA

Petitioner,

vs.

UNITED STATES OF AMERICA, et al.,

Respondents.

PETITIONER'S REPLY TO DEFENDANTS' BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

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Defendants concede they agreed with plaintiffs on the merits of this case. But, they say, they disagreed about plaintiffs' demand for attorneys' fees. This is the only controversy which they claim served as the jurisdictional basis for this case.

Defendants' argument can be summarized: if two parties can't litigate an issue by themselves because

there is no controversy between them about it, and if they disagree about whether one of them could get attorneys' fees for litigating it if only they could litigate it, then they can litigate it.

This is a sublimely pure form of bootstrap argument. It is a gross error which deserves summary reversal. It is a dangerous error which should prompt this Court to grant certiorari, since it swallows whole the Article III limitation on jurisdiction to actual cases and controversies. There is no sham or collusive litigation which would not be saved by registering in the pleadings a formal disagreement about attorneys' fees.

The "disagreement" about attorneys' fees is not even genuine in this case. There was no colorable authority for plaintiffs' demand that the government should pay their attorneys' fees, and they abandoned it in their stipulated agreement with defendants.

The Solicitor General's response on the merits misstates the issue. Petitioner agrees with him that tribal

members have no vested property interest in the judgment. But petitioner is not a tribal member: petitioner is the Tribe, and the property is Tribal property, petitioner's property. This Court articulated that distinction, and the existence of the Tribe's property right, in the principal case on which respondents rely. It held that funds "appropriated to pay an award redressing the breach of a treaty with a tribal entity" were "tribal property". Delaware Tribal Business Comm. v. Weeks, 430 U.S. 73, 85 (1977). The Court of Appeals' holding that the Tribe had no property interest in such a fund is directly contrary to this Court's opinion. The Tribe's plea that the government should not be allowed to pay that fund to nonmembers of the Tribe deserves the attention of this Court.

Respectfully submitted,

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